

**GE-Pittsfield Citizen's Coordinating Council
Berkshire Community College
Susan B. Anthony Center**

**Meeting Highlights
October 26, 1999**

Prepared by the Massachusetts Office of Dispute Resolution.

Participants

34 members of the CCC were present. There were 60 people in the audience.

Welcome and Agenda Review

Harry Manasewich greeted everyone. All CCC members introduced themselves. Harry reviewed the agenda and asked if anyone had additions or changes; there were none. He also noted the fullness of the agenda and asked the CCC how it would like to manage its time. The CCC decided to extend the meeting time if needed in order to accommodate all presentations and questions.

Opening Remarks: John DeVillars, EPA's Regional Administrator

?? The community will get as many opportunities as it feels it needs to discuss the Consent Decree (CD) and ask questions over next 60 days. The CD will be on the EPA website and in the repositories.

3 Goals of the CD

- ?? Comprehensive restoration of river including ecological and recreational resources.
- ?? Achieving cleanup with a major economic development component.
- ?? Fair and equitable Natural Resource Damage (NRD) payments.

- ?? Needs CCC and citizen involvement to make things work.
- ?? Several positive steps have already occurred; river cleanup begins next week, Allendale School done, and an electric motor vehicle manufacturer has agreed to be the first major tenant in the economic development area.

Updates: Mike Carroll of GE

- ?? Allendale School complete.
- ?? Interim cover placed in Hill 78. No current activity at #37
- ?? 43 properties approvals obtained.
- ?? River mobilization begun.
- ?? October 31, will demolish RR bridge.
- ?? Close to awarding demolition on powerhouse stacks and tanks.

Dave Gibbs CCC Member

Read letter from Vinny Curro: Concerns over bank loans based on partial (to 3ft cleanup).

Barbara Cianforini CCC Member

Read letter from Vinnie Stracuzzi: Comments on CD “taking” of commercial properties.

Overview of CD and Scope Of Work (SOW): Bryan Olson & Tim Conway Of EPA**Bryan:**

Because of confusion resulting from letters sent to property owners by GE, want to clarify summaries. A few important items are missing. Activity and Use Limitations (AUL's) are completely up to owners. Residential areas cleaned up to 2ppm. AUL restriction; GE must offer minimum of 18% assessed value. Restricts owners from doing unrestricted digging on property in future. Owner gets compensated for losing future flexibility on property. Conditional Solution (without AUL): Goes down to 3 feet. Can plant trees, drainage pipes etc. Requires GE to conduct remediation at deeper depth necessary for foundation, etc. Provides added flexibility.

John DeVillars : This will make properties safe for anyone that goes on it. EPA and DEP are willing to meet with bankers relative to financing to assure them of the safety of the properties.

Bryan

AUL would be transferred with property. Governments will not put pressure on people to go with either of the options. Variable cleanup levels based on property uses at site.

Uncomet Brook runs through landfill which is a potential source to river. Brook will be re-routed, wetland cleaned up, and landfill capped. Soil to be removed/replaced to 1ppm. Present location is not natural/historical location of brook.

Plastics area to be cleaned up to industrial standards. Same for General Dynamics and Ordnance areas. Hill 78 to be cleaned up to industrial standards. Building 71 to be cleaned up to industrial standards: no material in unit, but liner in place. Will take material out of an uncontrolled atmosphere with high risks and move to area where risks can be controlled.

Transformer Division is area of redevelopment. Most buildings to be torn down, cleaned up to industrial standards. New buildings to be constructed.

Area south of East Street: demolition but no rebuilding, instituting a 200 ft. buffer.
Lyman Street Parking Lot: removing large amounts of oil. Newell Street Parking Lot: 8,000 gallons oil removed in last several months.

Oxbow A&C: cleanup to active recreational standards. There will also be plantings and restoration. Plantings and restoration components will improve aesthetics for neighbors.

Oxbow B and Silver Lake: removing hot spot in northeast corner. Laying down sand across lake bottom. Will serve as barrier for residual contamination. Will armor outside edges of lake to combat erosion. Cleanup will be to active recreational standards. Building walkways along northern end to southeastern end. Habitat will be enhanced; working with NRD Trustees on this. Swimming and fishing is not considered a hazard from a risk perspective. There are not many urban areas with a large lake like this that can be saved. If it doesn't work it will have to be fixed.

First ½ Mile: already covered at previous meetings. Next 1 ½ Miles : remediation to be done by EPA with cost sharing with GE. Expects costs to be relatively reasonable. Expects EPA to pay 10-20% total cost. EPA to come up with a list of remedial options and to present to public for comment and its preferred option.

Will consult with ex-employees to determine best boring/well locations to ensure we capture all oil.

Rest of River: EPA to choose remedial strategy in 2002, before completion of First ½ mile and next 1 ½ miles. Will use hydrodynamic model to determine how long it will take for Woods Pond to recover and clean itself. Larger time gap between action/no-action will determine if cleanup is to be done.

Human Health and Ecological Risk Assessments will be conducted. Corrective Measures Study to be done to determine remedial options and opportunities for cleanup.

Tim Conway of EPA:

Summarized Appendices of CD. Agreement assures that government and the community will receive significant amount of cleanup and cost recovery from GE.

Questions:

Questions and comments were presented in regards to Covenants Not to Sue and Contribution Protection. In response to covenants not to sue, Tim noted that the government is releasing its claim against a private party (GE) in exchange for its agreeing to a particular cleanup and to pay costs. GE cannot be sued for CD activities or costs it is already paying. Very complicated. Tim agreed to sit down with people individually to discuss and explain further.

In response to questions regarding contribution protection, Tim explained that contribution protection (in general-not specific to GE CD) as follows:

If more than one person is responsible for environmental damage and the first person incurs significant costs for cleanup, the first person can pursue other persons that may have contributed to the damage for cost reimbursement so they do not have to pay more than their fair share.

He noted that GE is protected from a suit by third parties (in regards to its contribution) that may be seeking reimbursement for cleanup costs (Superfund Law allows GE protection from third parties). However, covenants are not absolute. CD includes

standard covenant with “reopeners”. If something comes up that governments didn’t know when they entered into settlement and that condition causes government to believe cleanup will not be protective, it can require more cleanup and cost recovery. It can require modifications to the technical Scope of Work if it finds out there is a better way of doing it. Many provisions to deal with of a variety of emergencies. **Tim stressed that claims for things other than contribution are not affected by the settlement.**

Jim Milkey of MA Office of the Attorney General

Party that resolves cleanup liability with state gets protection from third party suits. State law language broader than federal. The form of liability relief bars only certain claims, eg. damage to property. GE is not receiving contribution protection for residential fill properties as part of the CD; it is not part of CD.

In response to questions regarding the reason letters were sent to property owners by GE: This was driven by state law. GE cannot obtain protection unless it complies with certain aspects of state law, including notification of parties. Letters went out to 1200 people who were owners of record of “the site”.

Robert Bell, Acting Regional Director for MA DEP clarified: notice may have also gone to some people who do not own property covered by CD. Letter also informs of right to comment on settlement within 90 days. Separate overlapping process. People can comment on any aspect of CD. Federal process to end on December 25, 1999. State process to end 120 days from date of lodging (or 90 days from date received GE’s letter). In order to ensure comments received in sufficient time to be considered, people should submit them by Dec. 25, 1999 to Department of Justice in Washington, D.C. (address provided). *He stressed that settlement doesn’t necessarily preclude people “going after” GE for additional cleanup or reimbursement.*

Questions by “Get Real”.

Asked why residential properties were listed in CD if they are not part of settlement. Tim responded that Appendix J of the CD listed residential addresses because EPA spent money in the past to investigate residential fill properties in order to assist DEP. EPA wanted to recover this money in order to credit it towards a fund that could be applied to other cleanup at site. He noted that it was a payment accounting mechanism to ensure EPA would recover money already spent in this regard but also protects GE from being “double billed” for work already completed. He said that over \$1M was spent by EPA for residential investigation.

In regard to questions about loss of property values, John DeVillars stated that he thought the health standards in the agreement will be protective of property values as well. If problems with banks arise over property values, governments and GE willing to spend time necessary to explain why property values won’t go down.

Get Real asked for a public forum to discuss residential fill removal issues with GE. GE noted that they could not commit to the meeting because the matter is under litigation.

Harry noted the apparent impasse and asked the CCC how they would like to address this issue. It was put on the agenda for the next CCC meeting.

Question about Reopeners: Reopeners apply to new information from sampling, health studies etc. Appendix 42 provides methods for evaluating new information to qualify for reopening; requires relevant and reliable information based on scientifically valid principles.

Clarification requested of “better ways of cleanup”. Response was that it means “if it is not working by the methodology under SOW”. Cannot reopen based on a “change of mind” in regards to general approach; more geared towards fine tuning.

A request was made for a “clear text layman’s” explanation of the GE Contribution letter to property owners. Jim Milke promised to provide a supplemental mailing.

Natural Resources Damages Overview: Tony Geidt, NRD Trustee

Suggests gathering with people most interested in this sometime in the first two weeks of November 1999. If interested, coordinate through Rachel Fletcher of HRRI.

1. Primary restoration synonymous with remedial action, best thing for restoration is to abate/control sources. This is the first and foremost component.
2. Approximately \$15.7 cash payment to be made by GE. \$4M PEDA component.
3. Specific Restoration in First ½ mile and next 1 ½ miles, with remainder in conjunction with rest of river remedies. Trustees to sit at table with Remedial Project Managers at EPA and DEP.
4. Studies at Woods Pond Dam & Rising Pond Dam, where major contamination held. Will decide if anything should be done to dams in connection with remediation.

Estimated value of projects to be performed by GE: \$5 to \$7M. NRD evaluation prepared in anticipation of litigation and for mediation. Number of factors went into settlement determination including public push to begin remediation.

Questions - Comments:

Concern that more damages will appear (such as to wells) than factored into monetary damages. Tony noted that high value PCB’s and damages factored into model.

What happens if standards change. Bryan noted that if standards change below 2ppm – it would be a re-opener.

CD Comment Logistics: Angela Bonarrigo of EPA

EPA (Bryan and Tim) will have office hours next week, November 3 & 4, 1999. Also arranging meetings one on one, with organizations, and anyone that wants to discuss CD more. She passed around a sign up sheet for this purpose. Noted that the CD & SOW are on the EPA website---www.epa.gov/region01/. Appendices etc. not on website but whole package available at repositories. HRI has entire copy, CT office of HVA – one

copy, Berkshire County Chamber of Commerce—one copy. She passed out a summary of the CD and other documents to the CCC.

She also announced that a Public Meeting on the CD will be held on Tuesday, November 16, 1999 at 6:30 p.m. the Berkshire Athenaeum Library Auditorium. There will also be a Resource Conservation and Recovery Act (RCRA) Reissuance meeting on Thursday December 2, 1999.

Tony Geidt noted that the Trustees are offering office hours for meetings---convenient time to be determined by interested parties.

Bryan-people can call to schedule anytime next month. November 3&4 was selected to allow opportunity early in process but people are not restricted to this.

Harry noted that there is no CCC meeting scheduled in November because it was moved up to this evening due to the release of the CD. He asked the CCC how they would like to proceed. *They decided to hold the next CCC meeting on Wednesday, November 17, 1999.*

***Overview of Settlement of Information Case and Administrative Consent Order (ACO):
By Robert Bell and Alice Moore of DEP.***

Rob Bell

In 1990 there were 2 Administrative Consent Orders issued by DEP to GE which generally regulated the sites now subject to the CD as well as the fill properties that will covered by the revised ACO. Administrative order (not court order) only between DEP & GE – no other agencies were parties; only covered state law. Only required GE to evaluate cleanup options but not perform cleanup. Orders revised over past year to reflect new facts-remove sites covered by CD - so it now covers only properties contaminated from fill by GE (to the extent not covered by CD). New ACO locks GE into final clean up for fill properties.

No negotiation in revision of these orders or cleanup standards. Basically will continue work of last few years on new properties. Ensures an accelerated pace for residential properties and schools. Parks playgrounds (those that were former junkyards) – fill is only 50% of fullers earth. Other parks/playgrounds- any hazardous materials. Commercial properties- fill is soil or fullers earth. If not GE fill, still can be pursued under State or Federal law (meaning, if not covered by CD or ACO, other laws apply). Effective date of ACO is a few weeks after date of entry of CD. 1990 ACOs still in place at this time.

Appendix J., listing of residential fill properties in CD, does not effect these properties. Only ACO applies to these properties; regulates the cleanup of these properties.

Alice Moore

ACO is a Civil agreement re: residential fill properties. 2 year investigation in coordination with DEP strike force – began as criminal. It concerned reporting violations (not in timely manner) does not impact individual property rights. Brought \$1.25M to Pittsfield to be used for further sampling and other related community improvement projects.

Jim Milkey, MA Office of the Attorney General

\$1.25M will be going to create the Berkshire Environmental Fund (BEF-new non-profit entity). Fund will pay for certain sampling, environmental education and community improvement projects. Example: sampling – if there is credible evidence of GE fill it should be covered under normal process w/GE funding. However, the BEF provides funds to sample properties without credible evidence of GE fill.

BEF Trustees on the Board will be appointed by Pittsfield Mayor Boyle, DEP, and AG's Office. Expenditures from the fund in no way affects anyone's legal claim rights – if anything it supplements it. Homeowners will not have to pay money up front for sampling per protocols laid out in settlement. Some smaller grants available. EPA intends to continue to fund as much sampling as can be credibly done, so that more of this fund can be applied to other purposes.

AG's office wants to ensure money spent in community within short period of time by year 2005 – so trust funds not feasible. Funds will be available very soon. Covenants not to sue under ACO are subject to reopener clauses but does not operate in same way as CD. No contribution protection for properties covered under ACO. Copies of settlement available from Martin Levin (617) 727-2200 x 2812. Copies to be placed in repositories

Questions

In response to a question about people that may have contaminated property but do not want it tested. Response was that the state has legal authority to force people to have properties tested – but not sure it wants to as a policy issue.

If there is evidence that property is likely to be contaminated, then state would probably require testing. If minimal information. – then state would lean towards protecting individual property rights.

Bryan – If credible evidence of health threat on property – will have it tested after talking to owner. If neighborhood has evidence of fill – they should come forward so their concerns can be addressed.

Next meeting scheduled for November 17, 1999.